

HOUSE BILL No. 1374

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2.5-9; IC 8-1-37.1.

Synopsis: Feed-in tariff for renewable energy facilities. Requires the utility regulatory commission (IURC) to adopt rules to establish an electric utility feed-in tariff (FIT) program. Provides that the rules adopted must do the following: (1) Require all jurisdictional electric utilities (utilities) to offer a FIT to eligible customers (including persons that are not existing customers of the electric utility) not later than July 1, 2015. (2) Require utilities, upon the request of an eligible customer, to enter into a contract, for a term of at least 20 years, for the purchase of electricity generated by a renewable energy facility (facility) located in Indiana at a site at which the utility provides, or will provide, retail electric service to the eligible customer. (3) Prohibit a utility from requiring a minimum size or capacity for participating facilities, subject to any: (A) program participation cap; or (B) maximum size or capacity limit (which must allow facilities with less than 20 megawatt capacities to participate) for any one participating facility; that the IURC may approve. (4) Establish appropriate standards for interconnections between facilities and utilities' electric systems. (5) Establish appropriate FITs for participating facilities, with separate rates for electricity generated from each type of qualifying renewable energy resource under the program. (6) Require that any renewable energy credit or clean energy credit earned by a utility under the program be retired. (7) Prohibit an electric utility from requiring that a person that otherwise qualifies to participate in the electric utility's FIT program to be a customer of the electric utility for any period of time before enrolling in the electric utility's FIT program. Requires the IURC to ensure that the program complies with certain
(Continued next page)

Effective: Upon passage; July 1, 2014.

Pierce

January 15, 2014, read first time and referred to Committee on Utilities and Energy.



federal laws, regulations, and orders. Requires the IURC to develop and make available a standard contract for use by utilities in entering into contracts with eligible customers under the program. Provides that a nonjurisdictional electric utility may offer a FIT program to eligible customers at any time under terms and conditions that: (1) are just and reasonable to the utility's customers and in the public interest; and (2) comply with certain federal laws, regulations, and orders, to the extent applicable. Requires the IURC to include certain information concerning the program in its annual report to the regulatory flexibility committee.



Introduced

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE BILL No. 1374

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1-2.5-9, AS AMENDED BY P.L.256-2013,
- 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2014]: Sec. 9. (a) The regulatory flexibility committee
- 4 established under IC 8-1-2.6-4 shall also monitor changes and
- 5 competition in the energy utility industry.
- 6 (b) The commission shall before August 15 of each year prepare for
- 7 presentation to the regulatory flexibility committee an analysis of the
- 8 effects of competition or changes in the energy utility industry on
- 9 service and on the pricing of all energy utility services under the
- 10 jurisdiction of the commission. **Beginning in 2015, the commission**
- 11 **shall include in its report under this subsection the following**
- 12 **information concerning the electric utility feed-in tariff program**
- 13 **established under IC 8-1-37.1:**
- 14 (1) For the report prepared by the commission in 2015,
- 15 information concerning the commission's implementation of

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the program, including any costs incurred by the commission in implementing the program.

(2) The following information for each electric utility that is required to offer a feed-in tariff (as defined in IC 8-1-37.1-6) under the program:

(A) The total number of renewable energy facilities (as defined in IC 8-1-37.1-8) participating in the electric utility's feed-in tariff program under all contracts described in IC 8-1-37.1-11(a)(2) that are in effect on the last day of the state fiscal year that ends in the same year as the commission's report under this subsection. The commission shall break down the total number of participating renewable energy facilities reported under this clause by:

- (i) the type of renewable energy resource (as defined in IC 8-1-37.1-9) used by the participating renewable energy facilities to generate electricity; and
- (ii) the size or capacity of the participating renewable energy facilities.

From the total number of participating renewable energy facilities reported under this clause, the commission shall identify those participating renewable energy facilities (by size or capacity and by type of renewable energy resource used) that were added to the electric utility's feed-in tariff program under contracts entered into during the state fiscal year that ends in the same year as the commission's report under this subsection.

(B) Information concerning any program participation caps established by the electric utility and approved by the commission under IC 8-1-37.1-11(a)(3)(A).

(C) Information concerning any maximum size or capacity limits for participating renewable energy facilities established by the electric utility and approved by the commission under IC 8-1-37.1-11(a)(3)(B).

(D) Information on the rates established by the commission under IC 8-1-37.1-11(a)(5) that are in effect under the electric utility's program as of the last day of the state fiscal year that ends in the same year as the commission's report under this subsection.

(3) Any other information that:

(A) pertains to the program or an electric utility required to offer a feed-in tariff under the program; and



(B) the commission considers relevant or useful to the regulatory flexibility committee, or that the committee requests from the commission.

(c) In addition to reviewing the commission report prepared under subsection (b), the regulatory flexibility committee shall also issue a report and recommendations to the legislative council before November 1 of each year that are based on a review of the following issues:

(1) The effects of competition or changes in the energy utility industry and the impact of the competition or changes on the residential rates.

(2) The status of modernization of the energy utility facilities in Indiana and the incentives required to further enhance this infrastructure.

(3) The effects on economic development of this modernization.

(4) The traditional method of regulating energy utilities and the method's effectiveness.

(5) The economic and social effectiveness of traditional energy utility service pricing.

(6) The effects of legislation enacted by the United States Congress.

(7) All other energy utility issues the committee considers appropriate; however, it is not the intent of this section to provide for the review of the statutes cited in section 11 of this chapter.

The report and recommendations issued under this subsection to the legislative council must be in an electronic format under IC 5-14-6.

(d) This section:

(1) does not give a party to a collective bargaining agreement any greater rights under the agreement than the party had before January 1, 1995;

(2) does not give the committee the authority to order a party to a collective bargaining agreement to cancel, terminate, amend or otherwise modify the collective bargaining agreement; and

(3) may not be implemented by the committee in a way that would give a party to a collective bargaining agreement any greater rights under the agreement than the party had before January 1, 1995.

(e) The regulatory flexibility committee shall meet on the call of the co-chairs to study energy utility issues described in subsection (c). The committee shall, with the approval of the commission, retain independent consultants the committee considers appropriate to assist the committee in the review and study. The expenses for the



consultants shall be paid with funds from the public utility fees assessed under IC 8-1-6.

(f) The legislative services agency shall provide staff support to the committee.

(g) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative members of interim study committees established by the legislative council.

SECTION 2. IC 8-1-37.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 37.1. Feed-in Tariff Program for Renewable Energy Facilities

Sec. 1. (a) The general assembly makes the following findings:

(1) The development of a robust and diverse portfolio of electric generating capacity, including the use of renewable energy resources, is necessary if Indiana is to continue to be successful in attracting new businesses and jobs.

(2) The payment by electric utilities for electricity generated from renewable energy resources:

(A) ensures a sound long term investment for individuals, businesses, nonprofit organizations, cooperatives, local units, and school corporations investing in renewable energy technologies; and

(B) creates strong economic incentives for those individuals, businesses, nonprofit organizations, cooperatives, local units, and school corporations to make the necessary capital and job creating investments in renewable energy technologies in states that provide such incentives.

(3) Indiana has considerable renewable energy resources that could support the development of new electricity generation.

(4) It is in the public interest for the state to encourage the rapid and sustainable development of renewable energy resources for the generation of electricity in Indiana.

(5) The rapid and sustainable development of renewable energy resources for the generation of electricity will benefit the health, safety, and welfare of Indiana and its citizens by doing the following:

(A) Stimulating the development of new technologies and industries in Indiana and creating new jobs to serve those emerging industries.



(B) Placing Indiana at the forefront of the nation's renewable energy revolution.

(C) Creating an Indiana marketplace for the development of and investments in renewable energy resources and technologies.

(D) Opening renewable electricity generation, and the economic opportunities that accompany such generation, to individuals, businesses, nonprofit organizations, cooperatives, local units, and school corporations in Indiana.

(E) Providing equitable opportunities for individuals, businesses, nonprofit organizations, cooperatives, local units, and school corporations to help grow Indiana's renewable energy industry.

(F) Reducing the price volatility and long term costs of electricity.

(G) Reducing air and water pollution and related health problems and health care expenditures.

(H) Protecting Indiana's natural resources.

(I) Reducing greenhouse gas emissions into the atmosphere.

(b) The purpose of this chapter is to:

(1) strengthen Indiana's economy by attracting new businesses and jobs in the growing renewable energy industry; and

(2) enable the rapid and sustainable development of renewable energy resources for the generation of electricity in Indiana by establishing a feed-in tariff program to allow eligible customers of electric utilities to sell electricity produced by renewable energy facilities to electric utilities at rates that stimulate the development of renewable energy facilities in Indiana and encourage the continuation of existing capacity from those facilities.

Sec. 2. As used in this chapter, "capacity", with respect to a renewable energy facility, means the maximum output of electricity, expressed in kilowatts or megawatts, that the renewable energy facility can supply to an electric system's load, adjusted for ambient conditions.

Sec. 3. (a) As used in this chapter, "customer" means any of the following that agrees, orally or otherwise, to pay an electric utility for retail electric service provided to a location in Indiana:

(1) An individual.



(2) A business, however organized.

(3) A nonprofit organization.

(4) A cooperative association.

(5) A unit (as defined in IC 36-1-2-23).

(6) A school corporation (as defined in IC 36-1-2-17).

(b) The term includes:

(1) an existing customer of an electric utility; and

(2) a potential customer of an electric utility.

Sec. 4. As used in this chapter, "electric utility" means:

(1) a public utility (as defined in IC 8-1-2-1(a));

(2) a municipally owned utility (as defined in IC 8-1-2-1(h));

or

(3) a local district corporation (as defined in IC 8-1-13-23(b));

that furnishes retail electric service to customers in Indiana.

Sec. 5. (a) As used in this chapter, "eligible customer" means a customer that agrees, orally or otherwise, to pay an electric utility for retail electric service provided, or to be provided, at an Indiana location that is the site of a renewable energy facility, regardless of whether:

(1) the customer; or

(2) a person other than the customer;

owns, operates, manages, controls, or invests in the renewable energy facility.

(b) The term includes:

(1) an existing customer of an electric utility; and

(2) a person that is not an existing customer of an electric utility but agrees to become a customer of the electric utility upon enrolling in the electric utility's feed-in tariff program.

Sec. 6. As used in this chapter, "feed-in tariff" or "FIT" means a rate that:

(1) an electric utility pays to an eligible customer, under a contract described in section 11(a)(2) of this chapter, for electricity that is:

(A) generated by a renewable energy facility located at a site in Indiana at which the electric utility provides retail electric service to the eligible customer; and

(B) supplied back to the electric utility's system; and

(2) is determined by the commission under rules adopted under section 11(a)(5) of this chapter.

Sec. 7. As used in this chapter, "program" refers to the electric utility feed-in tariff program established by the commission under section 11 of this chapter.



1 **Sec. 8. (a) As used in this chapter, "renewable energy facility"**
 2 **means a facility that:**

- 3 (1) is located in Indiana;
 4 (2) generates electricity solely from a renewable energy
 5 resource; and
 6 (3) is capable of providing electricity directly to an electric
 7 grid.

8 **(b) The term includes the following:**

9 (1) An alternate energy production facility (as defined in
 10 IC 8-1-2.4-2(b)), to the extent the alternate energy production
 11 facility generates electricity from a renewable energy
 12 resource set forth in section 9 of this chapter.

13 (2) A small hydro facility (as defined in IC 8-1-2.4-2(e)) at an
 14 existing dam.

15 **(c) The term does not include a cogeneration facility (as defined**
 16 **in IC 8-1-2.4-2(c)).**

17 **Sec. 9. (a) As used in this chapter, "renewable energy resource"**
 18 **means any of the following sources for the generation of electricity:**

- 19 (1) Wind energy.
 20 (2) Solar energy.
 21 (3) Hydropower from existing dams.
 22 (4) Geothermal energy.
 23 (5) Energy from organic waste biogas, including any of the
 24 following:

25 (A) Methane produced by the biodigestion of farm or
 26 animal wastes.

27 (B) Landfill gas.

28 (C) Sewage treatment gas.

29 **(b) The term does not include coal bed methane.**

30 **Sec. 10. As used in this chapter, "retail electric service" has the**
 31 **meaning set forth in IC 8-1-2.3-2(c).**

32 **Sec. 11. (a) Not later than June 1, 2015, the commission shall**
 33 **adopt rules under IC 4-22-2 to establish the electric utility feed-in**
 34 **tariff program. The rules adopted by the commission under this**
 35 **chapter must do the following:**

36 (1) Require all electric utilities subject to the jurisdiction of
 37 the commission for the approval of rates and charges to offer
 38 a FIT to eligible customers not later than July 1, 2015.

39 (2) Provide that after July 1, 2015, an electric utility shall,
 40 upon the request of an eligible customer, enter into a contract
 41 for the purchase of electricity generated by a renewable
 42 energy facility located in Indiana at a site at which the electric



1 utility provides or will provide retail electric service to the
 2 eligible customer. A contract under this subdivision must
 3 satisfy the following requirements:

4 (A) Be for a term of at least twenty (20) years.

5 (B) Require the electric utility to purchase electricity from
 6 the eligible customer at a rate that is not less than the FIT
 7 that is established by the commission under subdivision (5)
 8 and that applies at the time the contract is entered into
 9 with respect to:

10 (i) the renewable resource used by; and

11 (ii) the size or capacity of;

12 the renewable energy facility that is the subject of the
 13 contract. Subject to subdivision (5)(D), a contract required
 14 under this subdivision must specify that the rate that
 15 applies at the time the contract is entered into applies
 16 throughout the term of the contract.

17 (C) Require:

18 (i) the eligible customer to sell to the electric utility all
 19 the electricity generated by the renewable energy facility
 20 that is the subject of the contract; and

21 (ii) the electric utility to sell to the eligible customer all
 22 the electricity that is required at the site of the renewable
 23 energy facility that is the subject of the contract.

24 (3) Prohibit an electric utility from requiring a minimum size
 25 or capacity for renewable energy facilities participating in the
 26 program. However, in the rules adopted under this chapter,
 27 the commission may allow an electric utility to do the
 28 following:

29 (A) Subject to approval by the commission, establish
 30 program participation caps including:

31 (i) establishing a maximum aggregate capacity for all
 32 participating renewable energy facilities under the
 33 electric utility's FIT program;

34 (ii) limiting participation in the electric utility's FIT
 35 program based on a percentage of the amount of the
 36 electric utility's annual gross retail electric sales; or

37 (iii) establishing other restrictions approved by the
 38 commission.

39 If an electric utility seeks to establish a program cap under
 40 this clause, the commission may require as a condition for
 41 approving the cap that a certain percentage of the
 42 proposed maximum aggregate capacity, a certain



percentage of the electric utility's annual gross retail electric sales, or another part of the proposed program cap, as applicable, be reserved for electricity generated from one (1) or more types of renewable energy resources set forth in section 9 of this chapter, to ensure that the electric utility's program is not discriminatory with respect to particular types of renewable energy facilities or technologies.

(B) Subject to approval by the commission, establish a maximum size or capacity limit for a participating renewable energy facility. However, in establishing a maximum size or capacity limit under this clause, an electric utility:

(i) must allow renewable energy facilities with capacities of less than twenty (20) megawatts to participate in the program; and

(ii) may not base the maximum size or capacity limit on the amount of electricity purchased or required by an eligible customer from the electric utility at the site of the eligible customer's renewable energy facility.

(4) Establish appropriate standards for interconnections between renewable energy facilities and electric utilities' systems, based on the size, capacity, and technical requirements of the interconnecting facilities. In adopting standards under this subdivision, the commission may specify how the costs of the interconnection and any required upgrades to an electric utility's system are to be allocated among the parties.

(5) Establish appropriate FITs for renewable energy facilities that are the subject of a contract described in subdivision (2), subject to the following:

(A) The rates established must:

(i) be just and reasonable to the customers of the electric utility and in the public interest;

(ii) not be discriminatory with respect to particular eligible customers or particular types of renewable energy facilities or technologies;

(iii) be at levels sufficient to stimulate the development of renewable energy facilities in Indiana and to encourage the continuation of existing capacity from those facilities;

(iv) be based on an eligible customer's costs to generate the electricity sold under the program, plus a reasonable



1 rate of return; and

2 (v) be fair to both the electric utility's ratepayers and
3 investors.

4 (B) The commission shall establish separate rates for
5 electricity generated from each of the renewable energy
6 resources set forth in section 9 of this chapter, subject to
7 the following:

8 (i) Subject to item (ii) and except as provided in item (iii),
9 for electricity generated from each renewable energy
10 resource set forth in section 9 of this chapter, the
11 commission shall establish at least four (4) rates based on
12 the size or capacity (up to and including a nameplate
13 capacity of at least twenty (20) megawatts) of the
14 renewable energy facility that generates electricity from
15 the particular renewable energy resource.

16 (ii) For electricity generated from solar energy, the
17 commission shall establish separate rate classes for
18 rooftop facilities and ground-mounted facilities. For each
19 of these two (2) rate classes, the commission shall
20 establish four (4) rates based on the size or capacity (up
21 to and including a nameplate capacity of at least twenty
22 (20) megawatts) of the facility, as required by item (i).

23 (iii) For electricity generated from wind energy, the
24 commission shall establish at least four (4) rate classes
25 that reflect the wind resource intensity of the location in
26 Indiana at which the renewable energy facility that
27 generates the electricity is located. For each of these four
28 (4) rate classes, the commission shall establish a number
29 (to be determined by the commission) of rates, each of
30 which reflects the capacity of the facility or the rotor
31 swept area of the facility, as the commission determines
32 appropriate.

33 (C) In establishing rates under this subdivision for a
34 particular electric utility, the commission shall consider
35 the following:

36 (i) The electric utility's costs under the program,
37 including capital costs and operation and maintenance
38 costs, and taking into account the incremental cost of
39 electric energy that, but for the electric utility's purchase
40 of electricity from eligible customers under the program,
41 the electric utility would generate or purchase from
42 another source.



(ii) The term of the contract between the electric utility and an eligible customer.

(iii) Any federal tax credit or deduction, or any other federal incentive or subsidy, including any accelerated depreciation available for tax purposes, received by an eligible customer or another person that owns, operates, manages, controls, or invests in a renewable energy facility.

(iv) Any shifting of costs of the program to the electric utility's nonparticipating customers.

(D) Notwithstanding subdivision (2)(B), the commission may, in establishing rates under this subdivision, provide that the rate set forth in a contract under subdivision (2)(B) shall be adjusted periodically during the term of the contract to reflect the effects of inflation or deflation.

(E) The commission shall review the rates established under this subdivision on a periodic basis determined by the commission, but not less frequently than every two (2) years, to determine whether the rates in effect at the time of the review, as most recently adjusted under this clause, satisfy the requirements set forth in clause (A). If, after a review required under this clause, the commission determines that the rates in effect at the time of the review do not satisfy the requirements set forth in clause (A), the commission may amend the rules adopted under this subdivision to adjust the rates to ensure compliance with the requirements set forth in clause (A). However, any rate adjustments made by the commission under this clause apply only to contracts under subdivision (2) that are entered into after the effective date of the amended rules.

(6) Require that any renewable energy credit or clean energy credit (as defined in IC 8-1-37-3) earned by an electric utility in connection with the program be retired.

(7) Prohibit an electric utility from requiring that a person that:

(A) owns, operates, manages, controls, or invests in a renewable energy facility located in Indiana; and

(B) otherwise qualifies to participate in the electric utility's feed-in tariff program;

to be a customer of the electric utility for any period of time before enrolling in the electric utility's feed-in tariff program.

(b) In adopting rules under this chapter, the commission shall



1 ensure that the program complies with:

- 2 (1) the federal Public Utility Regulatory Policies Act of 1978
 3 (16 U.S.C. 2601 et seq.) and rules and regulations adopted
 4 under that act;
 5 (2) the Federal Power Act (16 U.S.C. 791a et seq.) and rules
 6 and regulations adopted under that act; and
 7 (3) any applicable order or ruling of the Federal Energy
 8 Regulatory Commission.

9 (c) An electric utility that is not subject to the jurisdiction of the
 10 commission for the approval of rates and charges may offer a
 11 feed-in tariff program to eligible customers at any time under
 12 terms and conditions that:

- 13 (1) are just and reasonable to the customers of the electric
 14 utility and in the public interest; and
 15 (2) comply with:
 16 (A) the federal Public Utility Regulatory Policies Act of
 17 1978 (16 U.S.C. 2601 et seq.) and rules and regulations
 18 adopted under that act;
 19 (B) the Federal Power Act (16 U.S.C. 791a et seq.) and
 20 rules and regulations adopted under that act; and
 21 (C) any applicable order or ruling of the Federal Energy
 22 Regulatory Commission;
 23 to the extent applicable.

24 An electric utility described in this subsection may use the rules
 25 adopted by the commission under this chapter as a guide or model
 26 for a feed-in tariff program offered by the electric utility under this
 27 subsection.

28 Sec. 12. Not later than June 1, 2015, the commission shall
 29 develop and make available a standard contract form for use by
 30 electric utilities in entering into contracts with eligible customers
 31 under rules adopted under section 11(a)(2) of this chapter. The
 32 form prescribed by the commission must require the parties to set
 33 forth the following information:

- 34 (1) The rate to be paid for each kilowatt hour of electricity
 35 purchased under the contract.
 36 (2) Any adjustments to be made to the rate to account for
 37 inflation or deflation, as may be prescribed by the commission
 38 under section 11(a)(5)(D) of this chapter.
 39 (3) The duration of the contract.
 40 (4) The following information for the renewable energy
 41 facility that is the subject of the contract:
 42 (A) The type of renewable energy resource used by the



renewable energy facility to generate electricity.

(B) The capacity or size of the renewable energy facility.

(C) The location of the renewable energy facility.

(D) Any technical specifications concerning the renewable energy facility that the commission may require.

(E) The owner or operator of the energy facility if the owner or operator is a person other than the eligible customer.

(F) Any federal tax credit or deduction, or any other federal incentive or subsidy, including any accelerated depreciation available for tax purposes, received by the eligible customer or another person that owns, operates, manages, controls, or invests in the renewable energy facility, with respect to the renewable energy facility.

(5) Any other pertinent information that the commission may require.

Sec. 13. The commission may adopt emergency rules in the manner provided under IC 4-22-2-37.1 to adopt the rules required by this chapter, including any amendments to the rules described in section 11(a)(5)(E) of this chapter. An emergency rule adopted by the commission in the manner provided under IC 4-22-2-37.1 expires on the date a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

SECTION 3. An emergency is declared for this act.

